

REMARKS

The above-referenced patent application has been reviewed in light of the Office Action, dated December 9, 2005, in which: claim 36 stands objected to and claims 2, 15, 24, 28, 30, 34, 36, and 54 stand rejected based on nonstatutory obviousness-type double patenting as being unpatentable over US Patent No 6,711,122. Reconsideration of the above-referenced patent application in view of the foregoing amendments and the following remarks is respectfully requested.

Claims 2-37 and 54 are now pending. Claim 36 and 37 have been amended to remove the "capable of" language objected to by the examiner. Assignee has replaced "capable of" with "operable to" and amended other portions of those claims for grammatical clarity. However, Assignee asserts that no prosecution history estoppel should result from this amendment because the amendment does not narrow the scope of claimed subject matter. Assignee respectfully asserts the amended language is not narrower than the language in claims 36 and 37 as originally presented and as such should not result in any prosecution history estoppel.

While Assignee takes no position with regard to the Examiner's nonstatutory obviousness-type double patenting rejection and/or the Examiner's characterization of the present application, in order to advance prosecution in this application Assignee is submitting the requested terminal disclaimer with this response.

In addition, Assignee has amendment the specification as requested by the Examiner to properly reference a priority claim and to add a reference to a prior-filed application for which priority is claimed; both of which were properly listed in an application data sheet filed with the present application.

37 CFR 1.78(a)(2) states that "any nonprovisional application claiming the benefit of one or more prior-filed copending nonprovisional applications or international applications designating the United States of America must contain or be amended to contain a reference to each such prior-filed application, identifying it by application number (consisting of the series code and serial number) or international application number and international filing date and indicating the relationship of the applications. Cross references to other related applications may be made when appropriate." Assignee respectfully asserts that the above-presented amendment satisfies the requirements of 37 CFR 1.78(a)(2).

37 CFR 1.78 (a)(2)((iii) states that "If the later-filed application is a nonprovisional application, the reference required by this paragraph must be included in an application data sheet (§ 1.76), or the specification must contain or be amended to contain such reference in the first sentence(s) following the title." Given that the specific reference to both prior-filed applications was correctly provided in an application data sheet filed with the present application It is respectfully asserted that no petition and no fee are required for this amendment.

To: Examiner John Pezzlo

From: Tamara Daw

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CONCLUSION

In view of the foregoing, it is respectfully asserted that all of the claims pending in this patent application, as amended, are in condition for allowance. If the Examiner has any questions, he is invited to contact the undersigned at (503) 439-6500. Reconsideration of this patent application and early allowance of all the claims is respectfully requested.

Please charge any shortages and credit any overcharges of any fees required for this submission to Deposit Account number 50-3703.

Respectfully submitted,

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